

IN THE IOWA DISTRICT COURT FOR CLARKE COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

MILLER PRODUCTS COMPANY,

Defendant.

LAW NO. CV010966

PETITION AT LAW

2009 APR 24 AM 9:23
CLARKE COUNTY IOWA

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Miller Products Company states as follows:

Introduction

1. The IDNR seeks the assessment of civil penalties and injunctive relief against Miller Products Company for discharging wastewater into the City of Osceola's publicly owned treatment works (POTW) at levels exceeding the zinc, chromium and pH limits contained in the Treatment Agreement with the city and in excess of pretreatment standards for zinc and chromium.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Miller Products Company is an Iowa corporation authorized to do business in the State of Iowa.

Definitions

5. "Disposal system" means "a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge" and "includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge." Iowa Code § 455B.171(5).

6. "Industrial waste" means "any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource." Iowa Code § 455B.171(9).

7. "Major contributing industry" means inter alia "an industrial user of a treatment works that . . . [i]s found by the department in connection with the issuance of an NPDES permit to have a significant impact, either singly or in combination with other contributing industries, on that treatment works or upon the quality of effluent from that treatment works." 67 Iowa Admin. Code 60.2.

8. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

9. "POTW" or "publicly owned treatment works" means "any device or system used in the treatment of municipal sewage or industrial wastes of liquid nature which is owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under Section 208 of the Act." 567 Iowa Admin. Code 60.2.

10. "Treatment works" means "any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating,

stabilizing, or disposing of sewage, industrial waste, or other wastes.” Iowa Code § 455B.171(35).

Jurisdiction

11. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1).

12. The Iowa Environmental Protection Commission (EPC) has rulemaking authority relating to water quality, pretreatment and effluent standards; location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455B.173(2), (3) and (6). Implementing rules are contained in 567 IAC 60-69.

13. Major contributing industries to another disposal system are required to submit to IDNR a treatment agreement with the owner of a disposal system which identifies and limits the monthly average and daily maximum quantity of compatible and incompatible pollutants discharged to the disposal system and variations in daily flow and provides that quantities to be discharged must be in accordance with the applicable standards and requirements in 567 Iowa Admin. Code 62. 567 Iowa Admin. Code 64.3(5).

14. The discharge of wastewater into a publicly owned treatment works in volumes or quantities in excess of those to which a major contributing industry is committed in the treatment agreement described in 567 Iowa Admin. Code 64.3(5) is prohibited. 567 Iowa Admin. Code 62.1(6).

15. Metal finishing point sources are also subject to federal pretreatment standards contained in 40 C.F.R. Part 433, as adopted by 567 Iowa Admin. Code 62.4(33).

16. The federal pretreatment standards for zinc are: daily maximum of 2.61 mg/l; monthly average of 1.48 mg/l. 40 C.F.R. 433.15(a), as adopted by 567 Iowa Admin. Code 62.4(33).

17. The federal pretreatment standards for chromium are: daily maximum of 2.77 mg/l; monthly average of 1.71 mg/l. 40 C.F.R. 433.15(a), as adopted by 567 Iowa Admin. Code 62.4(33).

18. No industrial user introducing wastewater pollutants into a POTW shall augment the use of process wastewater as a partial or total substitute for adequate treatment to achieve compliance with federal pretreatment standards. 40 C.F.R. 433.15(c), as adopted by 567 Iowa Admin. Code 62.4(33).

19. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

20. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(4).

Facts

21. Miller Products Company owns and operates a manufacturing facility located at 1015 North Main Street, Osceola, Iowa. The company manufactures fasteners such as nuts, bolts, lock pins and hitch pins for farm and home equipment. The manufacturing process includes lathe work, milling, grinding, drilling, tapping, and zinc electroplating followed by chromate coating, assembly and packaging.

22. The zinc electroplating and chromate coating processes generate in excess of 5,000 gallons per day of waste rinse water containing zinc and chromium. This wastewater is drained to a floor trench, subsequently drained to a sump pit, and then pumped to a Haviland treatment system located in the center of the electroplating room. The Haviland treatment system includes pH adjustment, polymer addition for coagulation, precipitation and clarification. The wastewater is then run through a sand filter to provide additional treatment.

23. Miller Products Company discharges its pretreated wastewater to the City of Osceola's publicly owned treatment works pursuant to a Treatment Agreement, a copy of which is attached as Exhibit A and incorporated by reference. The Treatment Agreement includes monthly average and daily maximum concentration and mass limitations for inter alia zinc and chromium, as well as a pH limit.

24. Miller Products Company is listed by the IDNR as an Industrial Contributor in the City of Osceola's National Pollutant Discharge Elimination System (NPDES) Permit No. 20-38-0-02, as amended on October 7, 2003. The limitations contained in the Treatment Agreement between Miller Products Company and the city, are incorporated in the city's NPDES permit as the "Industrial Contributor Effluent Limitations" for Miller Products Company, a copy of which is attached as Exhibit B and incorporated by reference.

25. On July 11, 1988, the IDNR issued Administrative Order No. 88-WW-21, a copy of which is attached as Exhibit C and incorporated by reference, against Miller Products Company for exceeding limitations under the then existing Treatment Agreement with the City of Osceola for discharge of pretreated wastewater into the city's POTW. The order assessed a \$1,000 penalty and ordered Miller Products Company to inter alia comply with applicable pretreatment standards immediately and thereafter.

26. Miller Products Company appealed Administrative Order No. 88-WW-21 and on December 19, 1988, entered into an Amendment to Administrative Order No. 88-WW-21, a copy of which is attached as Exhibit D and incorporated by reference. The amended order required Miller Products Company to comply with the zinc limitations contained in the then existing Treatment Agreement with the City of Osceola and established by federal pretreatment standards for metal finishers contained in 40 C.F.R. 433. The amended order also reduced the administrative penalty to \$500, provided Miller Products Company met the zinc limitations from October 1, 1988, through September 30, 1989.

27. Miller Products Company failed to comply with the limitations contained in its Treatment Agreement and with federal pretreatment standards and the matter was referred to the Attorney General for judicial enforcement. On November 29, 1990, a Petition was filed in State of Iowa, ex rel., Iowa Department of Natural Resources v. Miller Products Company, Clarke County Law No. 4166, alleging violations of 567 Iowa Admin. Code 62.4(33) and Administrative Order No. 88-WW-21, as amended. On September 16, 1991, this Court entered a Consent Order, Judgment and Decree, a copy of which is attached as Exhibit E and incorporated by reference, assessing a \$7,500.00 civil penalty and directing the Clerk of Court to issue a permanent injunction enjoining Miller Products Company from any violations of 567 Iowa

Admin. Code 62.4(33) and Administrative Order No. 88-WW-21, as amended. The Permanent Writ of Injunction was issued on September 17, 1991, a copy of which is attached as Exhibit F and incorporated by reference. Miller Products Company was served with the injunction on September 19, 1991.

28. On August 18, 1993, the IDNR approved a new Treatment Agreement between Miller Products Company and the City of Osceola, which remains in effect and is attached as Exhibit A.

29. On May 17, 2005, the IDNR conducted an inspection at Miller Products Company and observed an overflow bypass which was allowing its wastewater to bypass the sand filter as well as the city's monitoring location for the industrial wastewater. Sampling by the University Hygienic Laboratory (UHL) on May 18, 2005, outside of the plant and downstream from the city's monitoring location demonstrated that the city's monitoring location was not representative of actual zinc loadings in discharges from Miller Products Company to the City of Osceola's POTW. UHL samples showed a zinc concentration of 24 mg/l while the city's samples from the usual monitoring location at the sand filter effluent chamber showed a zinc concentration of 6.1 mg/l.

30. During the May 17, 2005, inspection, the IDNR also observed that a hose connected to city water was flowing into the sand filter at an approximate rate of six gallons per minute. The impact of the hose flowing into the sand filter was to dilute rather than treat the wastewater. The IDNR instructed Miller Products Company to insure that sampling of its wastewater was at a representative location and that the dilution hose be removed from the sand filter. The sampling location was subsequently moved so that any bypass of the sand filter would be sampled.

31. On January 23-27, 2006, the United States Environmental Protection Agency (EPA) conducted an inspection of Miller Products Company. The EPA observed that Miller Products Company had numerous exceedances of the limits established in the Treatment Agreement between the industry and the city. The EPA also observed that wastewater was again bypassing the sand filter and then discharging into the POTW. This discharge was being sampled.

32. On March 2, 2006, the IDNR sent a Notice of Violation to Miller Products Company for violations of zinc, chromium and pH limits contained in the Treatment Agreement with the City of Osceola, Iowa, during May, August, September, November, and December of 2005 and January of 2006.

33. On September 13, 2006, the IDNR sent a Notice of Violation to Miller Products Company for violations of zinc and pH limits contained in the Treatment Agreement with the City of Osceola, Iowa, during January, February, March, and April of 2006.

34. On October 2, 2007, the IDNR sent a Notice of Violation to Miller Products Company for violations of zinc and chromium limits contained in the Treatment Agreement with the City of Osceola, Iowa, during October, November and December of 2006; and January, February, March, April, May, June, and August of 2007.

35. Miller Products Company has continued to violate applicable zinc and chromium limits during the time period including but not limited to September and October of 2007.

36. On October 18, 2007, the IDNR sent a Notice of Violation to Miller Products Company, after receiving sampling data from the City of Osceola indicating that Miller Products Company had been discharging hexavalent chromium into the city's POTW. Hexavalent chromium is highly toxic to aquatic organisms and poses serious exposure risks to humans. The IDNR directed Miller Products Company to eliminate the discharge of hexavalent chromium.

Miller Products Company has subsequently suspended its use of hexavalent chromium while it investigates alternative manufacturing and pretreatment processes.

Violations

37. Miller Products Company discharged wastewater into the City of Osceola's POTW at levels in excess of applicable zinc, chromium and/or pH limitations during the time period including but not limited to May, August, September, November, and December of 2005; January, February, March, April, October, November, and December 2006; and January, February, March, April, May, June, August, September and October of 2007, in violation of the Treatment Agreement with the city, 567 Iowa Admin. Code 62.1(6) and 62.4(33).

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Miller Products Company pursuant to Iowa Code section 455B.191 for each day of violation of 567 Iowa Admin. Code 62.1(6) and 62.4(33), not to exceed Five Thousand Dollars (\$5,000.00) for each day of each such violation;
- b. permanently enjoin Defendant Miller Products Company from further violations of 567 Iowa Admin. Code 62.1(6) and 62.4(33); and
- c. permanently enjoin Defendant Miller Products Company from discharging hexavalent chromium into the City of Osceola's POTW, unless expressly authorized by a pretreatment agreement with the City of Osceola which has been approved in writing by the Iowa Department of Natural Resources.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in dark ink, appearing to read "David R. Sheridan", with a long horizontal flourish extending to the right.

DAVID R. SHERIDAN, AT0007176
Assistant Attorney General
Environmental Law Division
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321 E. 12th Street, Room 018
Des Moines, IA 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: dsherid@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

**IOWA DEPARTMENT OF NATURAL RESOURCES
OPERATION PERMIT APPLICATION
TREATMENT AGREEMENT**

DNR USE IOWA FACILITY NO.
IND. CONT. AGREEMENT NO.
REPLACES AGREEMENT NO.

NOTICE

A properly executed Treatment Agreement must be submitted by the contributor not less than one hundred eighty (180) days before the new major contributing industry proposes to discharge into a wastewater disposal system. Any proposed expansion, production increase or process modification that may result in any change to a previous Treatment Agreement requires execution of a new Treatment Agreement.

MAJOR INDUSTRIAL CONTRIBUTOR		SYSTEM RECEIVING WASTE	
NAME Miller Products Company	NAME City of Osceola	NAME	NAME
MAILING ADDRESS 1015 N. Main, Osceola, IA 50213	MAILING ADDRESS 115 N. Fillmore, Osceola, IA 50213	MAILING ADDRESS	MAILING ADDRESS
AUTHORIZED REPRESENTATIVE Jack B. McFarland	PHONE NO. 515-342-2103	AUTHORIZED REPRESENTATIVE James D. McElvogue	PHONE NO. 515-342-4363

CERTIFICATION OF CONTRIBUTING INDUSTRY

I am the duly authorized representative for the major industrial contributor identified above and state that the proposed discharge to the system receiving waste identified above shall not exceed the quantities listed on page two of this form after

EFFECTIVE DATE
June 1, 1993

I further assure that notice of any anticipated increase in pollutants contributed shall be given to the owner of the system identified above sufficiently in advance of such increase to allow this contributor to submit a new treatment agreement to the Department of Natural Resources not later than sixty days in advance of the increase or change.

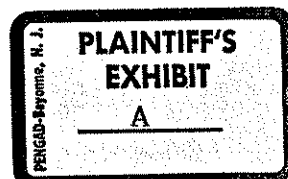
TYPED OR PRINTED NAME Jack B. McFarland	TITLE President	SIGNATURE <i>Jack B. McFarland</i>	DATE May 4, 1993
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CERTIFICATION OF SYSTEM RECEIVING WASTE

I am the duly authorized representative for the facility owner named above and state that the owner agrees to accept the discharge described on page two from the contractor identified above, and accepts responsibility for providing treatment of the volume and quantities described on the reverse in accordance with the provisions of Chapter 455B, Code of Iowa, and the rules of the Department of Natural Resources. This agreement is conditioned on the industrial contributor complying with all applicable standards and requirements of the Department of Natural Resources and the United States Environmental Protection Agency. This agreement is entered for the purpose of identifying pollutants contributed and limiting the quantity contributed, and shall not otherwise be construed to affect local ordinances, sewer service agreements or fee systems entered into between the parties.

This agreement may be modified or terminated by the owner of the disposal system if additional pollutants or additional quantities or volumes of pollutants are contributed other than identified on the reverse, or because of any condition that requires either a temporary or permanent reduction or elimination of the accepted contribution.

TYPED OR PRINTED NAME James D. McElvogue	TITLE Wastewater Supt.	SIGNATURE <i>James D. McElvogue</i>	DATE 5/4/93
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1. PROCESS DESCRIPTION					
SPECIFIC MANUFACTURING PROCESS Contract Screw Machine Products					SIC CODE 3451
CONSUMPTION			PRODUCTION		
PRINCIPAL RAW MATERIAL	AMOUNT CONSUMED PER DAY	PRINCIPAL PRODUCTS	AMOUNT PRODUCED PER DAY		
Steel	8,000 lbs.	Steel parts.	4,800 lbs.		
2. HOURLY MAXIMUM FLOW CONTRIBUTION		3. DAYS OF OPERATION PER WEEK	4. HOURS OF OPERATION DURING PEAK DAY OF OPERATION		5. RANGE OF pH LEVEL IN CONTRIBUTION
1000		5	12		<div style="display: flex; justify-content: space-between;"> MINIMUM 6.0 MAXIMUM 10.0 </div>
6. DESCRIPTION OF PRETREATMENT PROVIDED					
Zinc is recovered by a flocculation/sedimentation system. Zinc is dewatered, bagged, and shipped to authorized land fill.					
7. DESCRIPTION OF ANY BATCH OR PERIODIC DISCHARGES					
8. COMPATIBLE WASTE IN CONTRIBUTION					
WASTEWATER PARAMETER	AVERAGE	MAXIMUM	WASTEWATER PARAMETER	AVERAGE	MAXIMUM
Flow (MGD)	0.010	0.015	Ammonia Nitrogen (lbs/day)		
BOD ₅ (lbs/day)			Oil and Grease (mg/l)		
Total Suspended Solids (lbs/day)					
Total Kjeldahl Nitrogen (lbs/day)					
9. INCOMPATIBLE WASTE IN CONTRIBUTION (use blank 8½ x 11 paper to continue this item)					
WASTEWATER PARAMETER	AVERAGE		MAXIMUM		
	mg/l	lbs/day	mg/l	lbs/day	
Zinc	1.48	0.123	2.61	0.327	
Chromium	1.71	0.143	2.77	0.347	
Copper	0.50	0.042	0.80	0.100	
Lead	0.43	0.036	0.69	0.086	
Nickel	2.38	0.198	3.98	0.498	
Silver	0.24	0.020	0.43	0.054	
Cadmium	0.07	0.006	0.11	0.014	
Cyanide	0.65	0.054	1.20	0.150	
Total Toxic Organics			2.13	0.266	

Facility Name: OSCEOLA CITY OF STP

Permit Number: 2038002

Industrial Contributor Effluent Limitations

Industrial Contributor: MILLER PRODUCTS

Outfall No.: 001 EFFLUENT FROM THE PRETREATMENT SYSTEM PRIOR TO MIXING WITH OTHER WASTESTREAMS.

You are prohibited from discharging pollutants except in compliance with the following effluent limitations:

EFFLUENT LIMITATIONS											
Wastewater Parameter	Season	Type of Limit	% Removal	Concentration				Mass			
				7 Day Average/Min	30 Day Average	Daily Maximum	Units	7 Day Average	30 Day Average	Daily Maximum	Units
FLOW	YEARLY	FINAL			0.01	0.015	MGD				
PH (MINIMUM - MAXIMUM)	YEARLY	FINAL		6.0		10.0	STD UNITS				
CADMIUM, TOTAL (AS CD)	YEARLY	FINAL			0.07	0.11	MG/L		6.0	14.0	.001LBS/D
CHROMIUM, TOTAL (AS CR)	YEARLY	FINAL			1.71	2.77	MG/L		143.0	347.0	.001LBS/D
COPPER, TOTAL (AS CU)	YEARLY	FINAL			0.5	0.8	MG/L		42.0	100.0	.001LBS/D
CYANIDE, TOTAL (AS CN)	YEARLY	FINAL			0.65	1.2	MG/L		54.0	150.0	.001LBS/D
LEAD, TOTAL (AS PB)	YEARLY	FINAL			0.43	0.69	MG/L		36.0	86.0	.001LBS/D
NICKEL, TOTAL (AS NI)	YEARLY	FINAL			2.38	3.98	MG/L		198.0	498.0	.001LBS/D
SILVER, TOTAL (AS AG)	YEARLY	FINAL			0.24	0.43	MG/L		20.0	54.0	.001LBS/D
TOTAL TOXIC ORGANICS	YEARLY	FINAL				2.13	MG/L				
ZINC, TOTAL (AS ZN)	YEARLY	FINAL			1.48	2.61	MG/L		123.0	327.0	.001LBS/D



IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

MILLER PRODUCTS COMPANY
Osceola, Iowa

ORDER NO. 88-WW-21

TO: Miller Products Company
c/o Jack McFarland, Vice President and Registered Agent
Highway 69 North
Osceola, IA 50213

I. SUMMARY

This order requires you to immediately and hereafter comply with pretreatment limitations, to perform additional monitoring and evaluation, and to pay a penalty of \$1000.00.

II. JURISDICTION

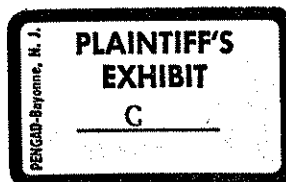
This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and chapter 567--10(455B), Iowa Administrative Code (I.A.C.), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Miller Products Company, an Iowa corporation, owns and operates a metal parts and accessories manufacturing facility, located in Osceola, Clarke County, Iowa. The industrial processes associated with this facility include zinc electroplating of carbon steel and other metal parts. These processes generate wastewater which includes zinc, among other pollutants. Wastewater is pretreated and discharged to the municipal waste disposal system for the City of Osceola. Wastewater from the latter system is discharged to White Breast Creek, tributary to the Red Rock Reservoir (Des Moines River).

2. This industry is limited by treatment agreement with the City to the discharges of wastes to the City system containing no more than .21 mg/l monthly average and .37 mg/l daily maximum zinc. These limits are based on a sampling location which includes dilute waste streams, and are designed to insure compliance with Federal and State standards for discharge of zinc from metal finishing operations of 1.48 mg/l, monthly average, and 2.61 mg/l, daily maximum.

3. On March 14, 1986, the department collected a wastewater sample at Miller Products to determine compliance with standards



IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

ISSUED TO: Miller Products Company

and also due to concerns with high zinc levels in the City's sludge. That sample was found to contain at 34 mg/l zinc. Sampling by the City of Osceola in 1986 also indicated zinc discharges far in excess of standards.

4. In January, 1987, the industry installed pretreatment facilities to deal with this problem. Periodic excess discharges continued. Most recently, discharges in December 1987 through February 1988 were at levels ranging from 43.5 mg/l (average) to 270 mg/l (maximum). Discharge levels for zinc in March and April 1988 were also excessive.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173(2) authorizes and requires the Environmental Protection Commission to adopt rules establishing pretreatment standards, among other things, and Iowa Code section 455B.173(6) authorizes and requires the Commission to establish rules relating to the inspection, monitoring, recordkeeping and reporting requirements of industrial users of publicly or privately owned disposal systems. The Commission has adopted chapters 567--60 to 64, Iowa Administrative Code (I.A.C.) in this regard. Rule 62.4(455B) adopts by reference federal pretreatment regulations. Subrules 62.4(3) and 62.4(33) adopt 40 CFR 403 - General Pretreatment Regulations and 40 CFR 433 - Metal Finishing. The above-described discharges exceed applicable standards.

2. Subrules 62.1(6) and (7) prohibit discharges to publicly or privately owned treatment works which are in excess of limitations in a treatment agreement or which interfere with treatment. The discharges described above violate these rules.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to abate and redress these violations:

1. Comply with applicable pretreatment standards immediately and hereafter.

2. Retain a consulting engineer to evaluate the operation of the industrial processes and wastewater generation and discharge, and submit a report to the department by September 30, 1988. The report shall make recommendations for correcting any compliance problems shown.

3. A penalty of \$1000.00 shall be paid to the department within 60 days of receipt of this order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Miller Products Company

VI. PENALTY

1. Chapter 567--10, I.A.C., was adopted by the Commission to implement Iowa Code section 455B.109, which authorizes the assessment of administrative penalties for minor violations of Iowa Code chapter 455B or rules, permits and orders promulgated or issued pursuant to chapter 455B. In view of the failure to comply with pretreatment standards, the department has the authority to assess a penalty in this matter.

2. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day and more severe criminal sanctions for pretreatment violations.

3. Pursuant to rule 567--10.2(455B), I.A.C., it has been determined that the most equitable and efficient means of redressing and abating the violations at this time is through the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. The violations could have been avoided by additional expenditures for facility improvements or additional operational measures or personnel. Presumably such expenditures will now be made in order to comply with this order. However, it is estimated that at least \$500.00 has been saved by delayed compliance, and that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil and criminal sanctions are authorized by statute. Maintaining compliance with national standards for discharge of pollutants into publicly or privately owned treatment works is a major program priority of the State and federal pollution control agencies. Despite the high penalties authorized, the department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Based on these considerations, \$300.00 is assessed for this factor.

c. Culpability. Miller Products Company, an Iowa corporation, has been informed by the department of these violations in the past, and they have recurred. Therefore, \$200.00 is assessed for this factor.

d. Aggravating or Mitigating Factors. The department is not aware of any factors which would aggravate or mitigate the seri-

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Miller Products Company

ousness of this matter. Therefore no adjustment to the penalty is made for these factors.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), a Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the department. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A.

VIII. NONCOMPLIANCE

If this Order is timely appealed or the penalty is timely paid, this matter will be handled administratively. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this order and any subsequent violations if the penalty is not timely paid.

Any questions regarding this order should be directed to:

Diana L. Hansen
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, Iowa 50319-0034
515/281-6267


LARRY J. WILSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11th day of

July, 1988

88147DNR0006

IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:

Miller Products Company
Osceola, IowaAmendment to
Administrative Order
No. 88-WW-21

To: Jack B. McFarland, Vice President
Miller Products Company
Highway 69 North
Osceola, Iowa 50213

Administrative Order 88-WW-21 was appealed by Miller Products Company. To resolve the appeal the following settlement has been entered into by the parties.

1. The Miller Products Company is required to meet the zinc limitations set forth in its pretreatment agreement with the City of Osceola, dated July 28, 1988. These limits are those established by the federal pretreatment standards for metal finishers, 40 CFR 433, and were approved by the Department pursuant to a letter dated August 10, 1988.

The Department's approval letter concerning Miller Products Company contained the following stipulations:

1) All regulated waste streams are combined and receive treatment in the company's wastewater treatment plant.

2) Sampling will be conducted at a point immediately following the treatment system before treated wastes are mixed with other waste streams.

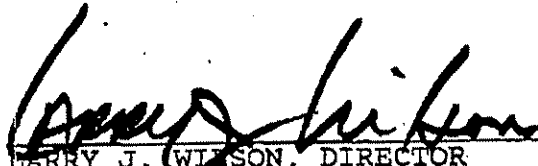
3) Zinc is the only pollutant regulated by the federal pretreatment standards that is present in the company's discharge.

The Department requests a letter from Miller Products confirming the above three stipulations.

2. The Department will perform a compliance inspection at the Miller Products Company facility to confirm that all unit operations required to be served by pretreatment equipment are subject to pretreatment and that samples taken meet applicable pretreatment limits.

3. The administrative penalty assessed by the original order will be reduced to \$500, which will be due within sixty days of receipt of this amended order. This reduction in penalty is conditioned upon the premise that Miller Products Company will meet the zinc limitations in its pretreatment agreement for a period of twelve months,

beginning October 1, 1988 and ending September 30, 1989, as demonstrated by test results included by the City of Osceola with its monthly operating reports and test results from any inspection by Department of Natural Resources staff. It is also conditioned upon the understanding that all metal finishing unit operations at this facility are connected to and are receiving adequate pretreatment. If any of these conditions is not met, the remainder of the original administrative penalty, \$500, becomes due to the Department immediately.



LARRY J. WILSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19th
day of December, 1988

FILED

IN THE IOWA DISTRICT COURT FOR CLARKE COUNTY

91 SEP 16 PM 4 01

STATE OF IOWA, ex rel., MARILYN FLUCKEY
 IOWA DEPARTMENT OF CLERK DISTRICT COURT
 NATURAL RESOURCES, CLARKE COUNTY IOWA LAW No. 4166

Plaintiff,

vs.

MILLER PRODUCTS COMPANY,

CONSENT ORDER, JUDGMENT
AND DECREE

Defendant.

NOW on this 16 day of Sept, 1991 the
 Court is presented with the plaintiff's petition seeking civil
 penalties and injunctive relief pursuant to Iowa Code
 § 455B.191. The Court having read the petition and being
 otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the
 subject matter of this action and the parties consent to entry of
 this Consent Order, Judgment and Decree.

2. Defendant Miller Products Company admits the violations
 alleged in the petition.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Miller Products Company shall pay a civil
 penalty of seven thousand five hundred and no/100 dollars
 (\$7500.00) for the violations alleged in the petition within ten
 (10) days of the entry of this Consent Order, Judgment and
 Decree. The defendant shall also pay interest at the annual rate
 of ten percent (10%) on any unpaid balance. Payments of the

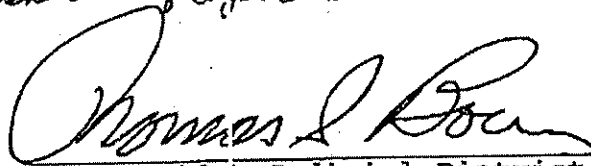


civil penalty and interest shall be made to the Clerk of the Iowa District Court for Clarke County.

2. The Clerk of the Iowa District Court for Clarke County shall issue and cause to be served upon Defendant Miller Products Company a permanent writ of injunction enjoining it from any violations of 567 IAC 62.4(33) and Administrative Order No. 88-WW-21, as amended.

3. The Court retains jurisdiction of this matter to ensure compliance with the terms of this order.

4. The costs of this action, including service fees for the injunction, are taxed to the defendant in the amount of \$ 70⁰⁰ *for service for Permanent Writ of Injunction* (Clerk to enter).


JUDGE, Fifth Judicial District
of Iowa

Approved as to form:

IOWA DEPARTMENT OF
NATURAL RESOURCES

MILLER PRODUCTS COMPANY

for Michael Camer
LARRY J. WILSON
Director

Jack B. McFarland
JACK MCFARLAND
Vice President

BONNIE J. CAMPBELL
Attorney General of Iowa

David R. Sheridan
DAVID R. SHERIDAN
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319
Tel. (515) 281-5351
ATTORNEYS FOR PLAINTIFF

Thomas M. Werner
THOMAS M. WERNER
Anderscn & Werner
1150 Polk Boulevard
Des Moines, Iowa 50311
ATTORNEY FOR DEFENDANT
MILLER PRODUCTS COMPANY

PERMANENT WRIT OF INJUNCTION

Chapter 664, Code

IN THE IOWA DISTRICT COURT

FOR CLARKE COUNTY, IOWASTATE OF IOWA, ex rel
IOWA DEPARTMENT OF NATURAL RESOURCES

Plaintiff/Petitioner

vs.
MILLER PRODUCTS COMPANY

Defendant/Respondent

Case No. 4166PERMANENT
WRIT OF INJUNCTIONTHE STATE OF IOWA, TO Miller Products Company DEFENDANT/RESPONDENT:

Whereas, State of Iowa, ex rel, Iowa Department of Natural Resources, as Plaintiff(s)/Petitioner(s) has a this day filed in the office of the Clerk of the District Court of Clarke County, a certain petition, under oath, making the aforementioned person(s) as Defendant(s)/Respondent(s) therein; and

Whereas, the said petition has been duly presented to the District Court of Iowa in and for said County, for the allowance of a Writ of Injunction, as prayed for in said petition; and whereas, the Court made an order allowing said Writ of Injunction to issue, restraining said Defendant(s)/Respondent(s) in manner and form hereinafter stated.

Now, therefore, you, the said Defendant(s)/Respondent(s) as aforesaid, in the name and by the AUTHORITY OF THE STATE OF IOWA, are hereby strictly enjoined and restrained from any violations of 567 IAC 62.4(33) and Administrative Order No. 88-WW-21, as amended

until the further order of said District Court in the premises.

Marilyn Shuckey

Clerk of the District Court

By _____

Deputy

TO THE SHERIFF OF CLARKE COUNTY:

You are hereby commanded to make due service of this writ upon said Defendant(s)/Respondent(s), and hereof fail not, and make return of this writ unto our said District Court, with your doings hereon endorsed, immediately.

WITNESS my official signature as Clerk of your said Court, and the seal thereof hereto affixed

(SEAL)

this 17th day of September, 1991.*Marilyn Shuckey*

Clerk

By _____

PERIOD-Bygone, N.J.

PLAINTIFF'S
EXHIBIT

F

#4166

THE STATE OF IOWA,

COUNTY OF Clarke

ss.

This writ came into my hands on the 17 day of Sept, 1997, and I hereby certify that I personally served the same on the said Miller Products Corp by reading the same to John M. Fink and delivering to John M. Fink a true copy thereof in Clarke County, Iowa, on the 19 day of Sept, 1997.

By John M. Fink

Sheriff

Deputy

SHERIFF'S FEES:

Service	\$	10.00
Mileage	\$	2.00
Copies	\$	
	\$	
	\$	
	\$	
Total	\$	12.00



MAHLYN E. LUCKEY
CLERK DISTRICT COURT
CLARKE COUNTY IOWA

FILED
SEP 16 1997
CLARKE COUNTY IOWA

PERMANENT INJUNCTION

THE STATE OF IOWA

TO

19

Filed

Clerk

Deputy

By

MAHLYN E. LUCKEY, CLERK DISTRICT COURT, CLARKE COUNTY, IOWA. D19 1149 P-1056